

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 95-18
(September 13, 1995)

**Notifying Prosecutor of Impending Deadline
For Filing Criminal Complaint**

Issues

Is it ethically improper for a justice of the peace to notify the county attorney when the 48-hour time limit after initial appearance is about to expire without the filing of a criminal complaint?

Answer: No.

Facts

It is the practice of a justice of the peace not to notify the prosecutor before releasing a defendant whose 48-hour time limit after initial appearance has lapsed without the court receiving a complaint. The judge was reluctant to do this, however, in a case involving multiple attempted murder charges. The judge was advised that most judges routinely instruct their clerks to call the prosecution in all such instances. When this judge did so, the defense accused him of doing the prosecution's job and asked that he be removed under Arizona Rules of Criminal Procedure Rule 10.1 from hearing felony cases because of bias in favor of the prosecution.

Discussion

Nothing requires nor prohibits a judge from contacting the prosecutor's office to determine the status of a complaint. In the absence of any specific legal direction, we believe there is no ethical impropriety in the conduct of the justice of the peace in the situation described here.

There may be legitimate reasons to communicate with the prosecution. Judges have the discretion to remind either party of approaching deadlines, confirm hearing dates, inquire if pleadings were filed and otherwise communicate on matters which are essentially administrative in nature. Canon 3B(7) of the Code of Judicial Conduct expressly allows such communication to be made *ex parte* so long as certain conditions are met. When a person is charged with multiple murders and a release deadline is approaching unless a complaint is filed, an inquiry call from the court clerk at the judge's request is administrative in nature. It may be that a complaint was filed but lost in the judge's office or misfiled under a wrong number. In any event, it is entirely proper to determine the status of a case; and, if in the course of doing this, the court's contact serves as a reminder, that fact does not make the court's actions improper.

In conclusion, there is no ethical impropriety in the court advising the prosecution of the impending 48-hour deadline for filing a criminal complaint.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 3B(7) (1993).